IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

(1) F.A.O. No.4970 of 2006 (O.&M.)

ICICI Lombards, Mumbai.

..... Appellant

Versus

Naresh Kumar and others.

..... Respondents

(2) F.A.O. No.4971 of 2006(O.&M.)

ICICI Lombards, Mumbai.

..... Appellant

Versus

Mrs.Saroj Bala and others.

..... Respondents

(3) F.A.O. No.4972 of 2006 (O.&M.)

ICICI Lombards, Mumbai.

..... Appellant

Versus

Kuldeep Singh and others.

..... Respondents

(4) F.A.O. No.4973 of 2006 (O.&M.)

ICICI Lombards, Mumbai.

..... Appellant

Versus

Jai Bhagwan and others.

..... Respondents

(5) F.A.O. No.4974 of 2006 (O.&M.)

ICICI Lombards, Mumbai.

..... Appellant

Versus

Satbir Singh and others.

..... Respondents

Date of Decision: 2.11.2006

CORAM: Hon'ble Mr.Justice Uma Nath Singh
Hon'ble Mr.Justice Mahesh Grover

....

Present: Shri Girish Agnihotri, Advocate for the appellant.

....

Mahesh Grover,J.

This judgment shall dispose of the aforementioned five appeals preferred by the insurer against common award dated 11.5.2006 of Motor Accident Claims Tribunal, Bhiwani (hereinafter described as `the Tribunal')

passed in M.A.C.T. Case Nos. 104 of 2003/2005, 284 of 2003/2005, 285 of 2003/2005, 184 of 2004/2005 and 254 of 2004/2005.

The only challenge made to the impugned award is that the J.C.B. Machine being an Earth Excavator was not a motor vehicle and, therefore, the liability as determined by the Tribunal is erroneous. Besides, it has been averred that the insurance policy specifically restricted the movement of the aforesaid machine to the confines of the factory premises of the owner. The appellant has also questioned the findings of the Tribunal on the issue of negligence of the driver of the J.C.B. Machine.

On 11.8.2003, an accident is said to have taken place involving a jeep bearing registration No.HR-18/8196 carrying about 13 to 14 persons when it struck against J.C.B. Machine (3rd Excavator Loader) bearing registration no. HR-39/A-1145. The version as given by the claimants coupled with their consistent testimony was that the drivers of both the vehicles were driving their respective vehicles negligently which resulted in the accident. The Tribunal, while determining this issue, held both the drivers guilty of contributory negligence and apportioned the same in the ratio of 60 : 40 qua the driver of the J.C.B. Machine and the driver of the jeep, respectively. Since there is no evidence on record to the contrary, hence, in view of this and the fact that the injured-claimants have consistently deposed regarding the negligence of both the drivers, we do not find any infirmity in the findings recorded by the Tribunal qua the negligence. Besides, both the drivers are facing criminal prosecution and both of them did not appear before the Tribunal.

Learned counsel for the appellant, while making his

submissions regarding Earth Excavator not being a vehicle and breach of conditions of the insurance policy since the vehicle was being used outside the confines of the factory premises, drew our attention to the terms of the policy, the relevant part of which is as follows:-

" ICICI LOMBARD

SCHEDULE

CONTRACTOR'S PLANT AND MACHINERY INSURANCE

POLICY NO. 5005/100704 ISSUED AT MUMBAI

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1. XX XX XX XX
2. XX XX XX XX
3. XX XX XX XX

4. Scope of Cover Main coverage : Contractor's Plant and Machinery Insurance Policy.

Extension i) Earthquake (Fire & Shock)
ii) Third Party Liability.
XX XX XX
XX XX XX

5. XX XX XX XX XX

6. Specification of insured items.

Item No.	Description of items (type Manufacturer Capacity).	Qty.	Year of Manuf-acturer	Make	Sum Insured
1.	Excavators (Caterpillar Shovels, Drag Shovels, Power Shovels. Self Propelled Excavators, truck, Shovels, Bucket excavators,bucket trenches) Engine No.	1	2002	JCB Escorts India	1,495,000/-

4H.20750201207
Chassis No.:
3D/9-818877.

7. Excess

For claim arising out of act of God	For claims arising out of of perits offer after act of God.
2% sum insured subject to a minimum of Rs.30,000/-	1% of sum insured subject to minimum of Rs.12,500/-.

8. Premium Calculation.:

Basic Premium	(Rs.)	xx	xx	xx
Add: Third Party Extension	(Rs.)	1,000.00		
Net Premium (Rounded Off)	(Rs.)	13,930.00		
Addl.Service Tax @ 5%	(Rs.)	798.00		
Total Premium Amount	(Rs.)	16,748.00		

9. Special conditions:-

endorsement:-

(i) Subject to Endorsement Number CPM3 attached herewith.

(ii)This insurance excludes loss, damage cost or expenses of whatsoever nature directly or indirectly caused by, resulting from or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any client sequence to the loss.

Subject otherwise to terms and conditions of Contractor's Plant and Machinery insurance policy.

Signed for and on behalf of the ICICI Lombard General Insurance Company Limited, at Mumbai on this day December 2,2002.

Sd/- Authorized signatory."

Having perused the above extracted portion of the insurance policy, we are of the opinion that the contention of the learned counsel for the appellant is misplaced. Section 2(28) of the Motor Vehicles Act,1988 (for short, `the Act') defines a `motor vehicle' or `vehicle' as any

mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer. The same is reproduced below:-

> "2. Definitions.- In this Act, unless the context otherwise requires,-
>
> (1) to (27) xx xx xx xx xx xx
>
> (28) "motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty-five cubic centimetres;"
>
> (29) to (49) xx xx xx xx xx"

In the light of the definition of `motor vehicle' or `vehicle' reproduced above, it can safely be concluded that an Earth Excavator is a vehicle which is capable of moving on the road and is, therefore, a vehicle within the meaning of Section 2(28) of the Act. Besides, the Excavator has been registered by the competent Registering Authority under the provisions of the Act and bears registration No.HR-39-A/1145. Much was sought to be made from the words "Contractor's Plant Machinery Insurance Policy" as

the learned counsel for the appellant wanted us to construe that the Excavator was a machinery and was not a vehicle. We are afraid, we cannot persuade ourselves to accept the contention of the learned counsel for the reason that the Excavator is certainly a vehicle capable of being plied on the road even though its function may be as a machine of the contractor.

For the reasons mentioned above, there is no merit in the contentions raised by the learned counsel for the appellant.

Moreover, the appeals have been filed beyond the period of limitation and the appellant has not shown any sufficient cause to condone the delay.

In the result, the appeals are dismissed as barred by time, as also on merits.

(Uma Nath Singh)
Judge

(Mahesh Grover)
Judge

November 02,2006
"SCM"